

02-10038 TENNARD v. DRETKE

Ruling below: CA 5, 317 F.3d 476.

QUESTIONS PRESENTED:

1. Is the Fifth Circuit's rule requiring a "nexus" to the crime before evidence of impaired intellectual functioning and judgment can be considered as mitigation for purposes of determining whether there is a violation of *Penry v. Lynaugh*, 492 U.S. 302 (1989) (Penry 1), inconsistent with the rationale of *Atkins v. Virginia*, 122 S.Ct. 2242 (2002)?

2. Did the Fifth Circuit err in resolving the plainly substantial question of the effect of *Atkins* on the Fifth Circuit nexus rule by denying a COA, rather than granting a COA and giving the substantive issue the merits consideration it deserves?

CERT. GRANTED: 10/14/03

Consolidated with 02-11309 for a total of one hour oral argument.